

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.42 of 2001

1. Bharat Steel Casting, a Partnership Firm, having its office at 8, Tatisilwai Industrial Area, Ranchi-835103.
2. Kamla Mukherjee W/o, late Samar Mukherjee
3. Sanjeev Mukherjee, S/o Late Samar Mukherjee, Partners of M/s. Bharat Steel Casting, the Appellant no.1 both are resident of Purulia Road, P.N. Bose Compound, Ranchi

.... Appellants

Versus

1. Allahabad Bank having its head office at Netaji Subhas Road, Calcutta branch office at Tati Silwai, P.O. Tatisilwai, P.S. Namkum Dist. Ranchi
2. Nirmal Kumar Rajak, Chuna Bhatta, Ranchi, Kokar, Ranchi
3. Manoj Kumar Tiwary Qrt. No.A-II/136 (T) P.S. Dhurwa, Dist. Ranchi

.... Respondents

For the Appellants : Mr. M.K. Laik, Sr. Advocate

For the Respondents : Mr. Gautam Rakesh, Advocate

P R E S E N T

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By Court:-

1. Heard the parties.
2. The defendant in the court below has filed this appeal being aggrieved by the judgment and decree dated 21.04.2001 passed by the Sub-Judge-IX, Ranchi in Mortgage Title Suit No.180 of 1994 corresponding to 20 of 1998 whereby and whereunder, the learned court below decreed the suit on contest against the defendant nos.1 to 4 and ex-parte against defendant no.5 and directed the defendants to pay a sum of Rs.6,30,340.42 along with cost of the suit and interest pendente lite and future interest at the rate of 15.5% per annum with quarterly rests to the plaintiff bank within two months from the date of decree.
3. The case of the plaintiff in brief is that the plaintiff is a nationalized Scheduled bank having its branch office at Tatisilwai, Ranchi. The plaintiff-bank made available cash credit facility to the limit of Rs.4,07,000/- to defendant no.1-which is a partnership firm. The

defendant nos.2 and 3 are partners of the defendant no. 1-partnership firm. The defendant no.1 executed different documents including the document of hypothecation on 08.06.1990. The defendant nos.4 and 5 are the guarantors against any default in repayment of the said loan by the defendant nos.1 to 3 in respect of the said cash credit facility. After grant of cash credit facility, the defendant nos.2 and 3 operated the account from time to time and the last transaction was made on 24.10.1991. It is also the case of the plaintiff that the civil courts were closed from 08.10.1994 till 10.11.1994 on account of Puja Vacation and as such the suit was filed on 11.11.1994 as the defendant failed to liquidate the loan. According to the plaintiff, there was a total outstanding due of Rs.7,76,541/- payable by the defendants to the plaintiff. The defendants after notice filed their written statement. Besides the usual defence the defendants pleaded that the sanction of the loan to the defendant no.1 by the plaintiff bank never prescribed the guarantor to furnish mortgage security. It was admitted by the defendants that on 26.05.1990 defendant no.1 was granted a cash credit facility by the plaintiff bank with a limit up to Rs.3,70,000/-. The defendants also took the plea that deed of hypothecation dated 08.06.1990 is a forged document. It was further pleaded by the defendants that at the time of sanction of the loan, the plaintiff bank got some blank undated forms signed by the defendant no.2 and 3 without explaining the contents thereof and those documents having lost their validity period are not enforceable under law. The defendants also took the specific plea that the suit is barred by time. The defendants also took the plea that after the grant of cash credit facility by the plaintiff bank on 26.05.1990 with a limit of Rs.3,70,000/-, the defendants never approached the plaintiff bank for enhancement of the said cash credit facility nor they executed any document as security for enhanced limit. It is the specific case of the defendant no.4 that he has not created any document in respect of any equitable mortgage with the plaintiff bank and the document if any in the bank in this respect is a forged document.

4. On the basis of the rival pleadings the learned trial court framed

the following ten issues :-

- (i) Is the suit as framed maintainable?
 - (ii) Has the plaintiff got valid cause of action and right to sue?
 - (iii) Is the suit barred by Law of Limitation, waiver, estoppel and acquiescence?
 - (iv) Is the suit bad for non-joinder of necessary parties?
 - (v) Whether the limit of cash credit facility was up to Rs.4,07,000/- or Rs.3,70,000/-?
 - (vi) Whether the loan amount falling due under the cash credit facility has been repaid or not?
 - (vii) Whether hypothecation deed dated 08.06.1990 is a forged document?
 - (viii) Whether the documents said to have been executed by the defendants are valid and enforceable under the law?
 - (ix) Is the plaintiff entitled to the reliefs as claimed for?
 - (x) Is the plaintiff entitled to any other relief or reliefs?
5. In support of its case, the plaintiff bank examined four witnesses and also proved the documents. The plaint of the suit has been marked as Ext.1, loan application has been marked as Ext.2, the acknowledgement of sanction of loan has been marked as Ext.3, demand promissory note dated 08.06.1990 has been marked as Ext.4, the waiver of presentation of promissory note dated 08.06.1990 has been marked as Ext.5, Ext.6 is the deed of guarantee executed by the defendant nos.4 and 5, Ext.6/a is the deed of guarantee executed by defendant nos.2 and 3, Ext.7 is the agreement executed by defendant nos.2 and 3 for recovery of the loan amount under Public Demands Recovery Act, Ext.8 is the deed of hypothecation, Ext.9 and 9/a are the statements of loan account and Ext.10 is the cheque bearing No.J340840 dated 24.10.1991 said to have been issued on behalf of the defendant no.1. On the other hand from the side of the defendant nos.1, 2 and 3, two witnesses have been examined. These defendants also proved the written statement which has been marked as Ext. A and the power of attorney executed by the defendant no.3 in favour of D.W. 2 which has been marked as Ext. B. The defendant

no.4 also examined one witness and the written statement of the defendant no.4 has been marked as Ext.A-1. Learned court below after taking into consideration both the oral and documentary evidence in the record, answered all the issues in favour of the plaintiff and decreed the suit as already indicated above.

6. Mr. M.K. Laik, the learned Senior Advocate for the appellants submitted that though the suit was filed as a title mortgage suit but during pendency of the suit the plaintiff vide order dated 22.02.2000, amended the plaint and deleted its second prayer that a decree be passed for foreclosure and sale of the property mortgaged to the plaintiff by the defendant described in the schedule of the plaint and after the amendment, the suit become a pure money suit thereby as per Art.35 of the Limitation Act, 1963, the suit being one of a suit in respect of promissory note payable on demand, the time period of limitation was three years and as the date of promissory note is 08.06.1990 hence, the suit being barred by limitation, the impugned judgment and decree be set aside and the suit of the plaintiff be dismissed being barred by limitation. Though the appellants has taken several other ground in the appeal memo but at the time of hearing of the appeal, learned Senior Advocate appearing for the appellants confined his argument on the point of limitation as already indicated above and did not press the other grounds mentioned in the appeal memo.

7. Mr. Gautam Rakesh, the learned counsel for the respondents on the other hand defended the impugned judgment and submitted that the suit is not for promissory note payable on demand but the suit is one for balance due on mutual, open and current account where there have been reciprocal demand between the parties and hence, the relevant article is Article 1 of the Limitation Act, 1963 and the period of limitation is three years from the close of the year in which the last item admitted or proved is entered in the account, such order is to be computed in the account and as D.W.2-Ramgin Mukherjee in paragraph- 12 of his deposition admitted that the entry dated 25.09.1991 is the last item admitted so the suit would have been barred by 1st January, 1995 as the period of limitation of three

years would start from 1st January, 1992 but the suit having been filed on 11.11.1994, the same is well within the time and hence, the learned court below having rightly decreed the suit, this appeal being without any merit be dismissed.

8. After hearing the submissions made at the bar and perusal of the record, the only point for determination in this appeal is whether the suit is barred by limitation?

9. Out of the four witnesses examined on behalf of the plaintiff, the P.W.1-Samuel Horo was the Assistant Manager of plaintiff bank on the date of adducing evidence in court. He has deposed about sanction of cash credit limit of Rs.4,07,000/- to the defendant no.1. In his cross-examination, he has stated that he has never seen the defendant no.2 and 3 nor can identify them. He was not present in the branch of the bank on the date of execution of the loan documents by the defendants. P.W.2-Jaileshwar Prasad Soni is an Advocate's clerk. He has proved the plaint which has been marked as Ext.1. In his cross-examination, he has stated that he knows the branch manager of the bank. P.W.3- Bharat Chandra Kuiri on the date of examination in court as a witness was the manager of Allahabad Bank, Tatisilwai. He has stated that he has signed plaint on behalf of the bank. He has also stated that the defendant nos.2 and 3 submitted the loan application form on behalf of the defendant no.1- which on being proved has been marked Ext.2. P.W.3 further stated that the defendant submitted the application for cash credit limit of Rs.4,07,000/-, which was sanctioned by the plaintiff bank. The acknowledgement of the loan sanctioned which also bears the signatures of the defendant nos.2 and 3 was marked as Ext.3. The defendant nos.2 and 3 in their personal capacity also executed demand promissory note which was marked as Ext.4. The waiver for presentation of promissory note dated 08.06.1990 bearing the signature of defendant nos.2 and 3 was marked as Ext.5. The letter of guarantee executed by the defendant no.4 and 5 was marked as Ext.6. The letter of guarantee executed by the defendant no.2 and 3 in their personal capacity was marked as Ext.6/a. The agreement executed by the defendant nos.2 and 3 for recovery of the

loan amount under Public Demands Recovery Act was marked as Ext.7. The deed of hypothecation dated 08.06.1990 was marked as Ext.8. The certified copy of the statement accounts from 05.03.1990 to 09.12.1994 has been marked as Ext.9. P.W.3 further stated that on 24.09.1992, the defendant operated the loan account for the last time and after that the defendants did not do any transaction in the account. Even after the notice and reminder, the defendants did not pay the loan amount hence, this suit was filed. He has also stated that the total outstanding amount was Rs.7,76,541/-. Initially the defendants were given a cash credit facility up to a limit of Rs.3,70,000/- but later on at the request of the defendants the manager enhanced the same by 10% hence, the documentation was made for the limit of Rs.4,07,000/-. He has also denied the contention of the defendants that they signed on blank papers. In his cross-examination he has stated that the documents were not executed in his presence. On 07.05.1991 as per Ext.9 Rs.35,000/- was deposited in the account but it has not been mentioned in the statement of accounts that who deposited the said amount. As per the terms of the loan, the defendant no.1 pledged a fixed deposit of Rs.50,000/- and the defendant nos.2 and 3 were to make a deposit for three years in the recurring deposit. The said amount has been adjusted towards interest in the loan account. P.W.4-Sudhir Kumar Mallik on the date of his deposition in court was the head cashier of Allahabad Bank in Tatisilwai Branch. He has stated that he was in bank since March 1991. He has identified the signature of the defendants and bank officers on the exhibited documents. In his cross-examination, he has stated that he cannot say anything about the documents which were prior to his joining in the branch. He further stated that on 25.09.1991, the last deposit of Rs.13,000/- in cash was made in the account and after that no cash deposit was made. Whether the said Rs.35,000/- or Rs.13,000/- was deposited by the borrower or the guarantor could be known on seeing the voucher. P.W.4 was further examined in chief on recall on 12.12.2000 and he has proved the certified copy of statement of account which was marked as Ext.9/a. In his further cross-examination, he has stated that he could not say when the loan account was declared non-performing

account.

10. On the other hand from the side of the defendants the D.W.1-Jitwahan Mahto is an Advocate's clerk. He has proved the written statement filed by the defendant nos.1 to 3 which has been marked as Ext.A. In his cross-examination, he has stated that the defendant nos.2 and 3 came to court and signed the written statement. D.W.2-Rangin Mukherjee has stated that the defendant no.3 is his nephew. The defendant no.3 because of a paralytic attack is not able to come to court and he is the power of attorney holder of defendant no.3. The power of attorney which has been proved by him was marked as Ext. B. D.W.2 further stated that none of the defendants have gone to bank to execute the documents. The Bank Manager came in the end of May or first week of June to the house of the defendants and at that time, the guarantors signed. No date was mentioned in the documents at the time they were signed by the defendants. The amounts deposited in the loan account towards liquidation of loan if paid in cash were deposited through pay in slips and vouchers. The defendants were depositing cash towards repayment of loan from time to time. On 25.09.1991, cash deposit of Rs.13,000/- was made and after that no cash deposit was made. D.W.3-Jai Prakash Sahu is also an Advocate's clerk. He proved the written statement filed by the defendant no.4 which was marked as A-1.

11. After going through the evidence in the record as discussed above, I have no hesitation in holding that this is not a suit on promissory note payable on demand simpliciter but there were several transactions in the account. It is settled principle of law that the limitation for recovery of outstanding amount in cash credit account is three years from the last deposition made by the borrower in the account provided the pay in slip is available with the bank. It is settled principle of law that a cash credit account is a facility which a person obtains from the Bank in order to draw money up to the limit agreed to and makes deposit at his convenience in the account of which the balance is made, such an account is mutual, open and current account and Art. 1 the Limitation Act applies for realisation of the dues under such account. The Hon'ble Orissa High

Court in the case of **Omprakash Agarwala vs. State Bank of India & Ors. AIR 1991 Orissa 98** Hon'ble Mr. Justice G.B.Pattnaik,(as his Lordship than was) relying upon the majority judgment of the Hon'ble Supreme Court of India in the case of **Kesharichand Jaisukhalal v. Shillong Banking Corporation Ltd. Shillong (in Liquidation), AIR 1965 Supreme Court 1711**, wherein the Hon'ble Supreme Court considered the question of a combined overdraft and deposit account and held that there were mutual dealings between the parties and the account was mutual and the period of limitation was 3 years from the close of the year of the last entry, which is same as Art. 1 of the Limitation Act, held in paragraph as under:-

"Having examined the decisions cited at the Bar and having applied my mind to the entries made in the ledger, I am persuaded to hold that a cash credit account is a mutual, open and current account and, therefore, Art. 1 of the Limitation Act would govern the case. Since the ledger itself clearly indicates that repayment was made on 30-10-1973, applying Art. 1, the period of limitation of 3 years would start from 31st of December, 1973." (Emphasis Supplied)

12. Similarly the Punjab & Haryana High Court in the case of **State Bank of India vs. Kashmir Art Printing Press, AIR 1981 Punjab and Haryana 188** held in paragraph -11 as under:

"The facts of the case are that the Branch Manager allowed the defendants the benefit of Cash Credit Account with a limit of Rs. 5000. A copy of the running Account has been produced on the record as Exhibit P.5. which shows that the persons who were allowed the benefit of Cash Credit Account had been withdrawing and repaying amounts up to the limit of Rs. 5000/-from time to time and on the debit balance, interest was accruing. For such a running account, the limitation is provided under Article 1 of the 1963-Limitation Act, which is analogous to Article 85 of the earlier Limitation Act. According to Article 1, the limitation is three years, which starts from the close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account; meaning thereby that the year in which the last entry is made would be excluded in computing the period of limitation and thereafter i.e. from the following January, the limitation of three years would start." (Emphasis Supplied)

13. So in view of the settled principle of law as discussed above I have no hesitation in holding that keeping in view the nature of the transaction in the cash credit facility involved in the account the same, is a mutual, open and current account and, therefore, Art. 1 of the Limitation Act would govern the case. So, the limitation is three years, which starts from the close of the year in which the last item admitted or proved, is entered in the account, such year to be computed as in the account; meaning thereby that the year in which the last entry is made would be excluded in computing the period of limitation and thereafter i.e. from the following January, the limitation of three years would start. In this case the last item admitted or proved, entered in the account being 25.09.1991 and since the suit has been filed on 11.11.1994 this suit is within time and hence, there is no merit in the submission of the learned counsel for the appellants that the suit is barred by time. Thus the point for determination is answered in the negative.

14. Accordingly, this appeal being without any merit is dismissed but in the circumstances without any costs.

15. Let the lower court records be sent back to the court below along with a copy of this judgment.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi.
Dated 4th April, 2018
A.F.R./Sonu-Gunjan/-